

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

POLYMER TECHNOLOGY SYSTEMS,	)	
INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No. 1:10-cv-0061 LJM-TAB
	)	
ROCHE DIAGNOSTICS CORPORATION,	)	
ROCHE DIAGNOSTICS GMBH, ROCHE	)	
DIAGNOSTICS OPERATIONS, INC.,	)	
ROCHE OPERATIONS LTD.,	)	
	)	
Defendants.	)	

**DECLARATION OF OMAR A. KHAN IN SUPPORT OF  
ROCHE'S MOTION TO COMPEL ARBITRATION AND TO DISMISS THE ACTION**

I, OMAR A. KHAN, hereby declare as follows:

1. I am an associate of the law firm of Wilmer Cutler Pickering Hale & Dorr LLP, attorneys for Defendants Roche Diagnostics Corporation, Roche Diagnostics GmbH, Roche Diagnostics Operations, Inc., and Roche Operations Ltd. (collectively "Roche"). I respectfully submit this declaration in support of Roche's Motion to Compel Arbitration and to Dismiss the Action.

2. This declaratory judgment action concerns the parties' rights and obligations under a License Agreement executed on December 15, 2003. With respect to confidentiality, the License Agreement provides in relevant part:

"Confidential Information" shall mean the terms and conditions of this [License] Agreement and all written information and data provided by a Party to the other hereunder and marked "Confidential" or a reasonable equivalent thereof....

\*\*\*

Confidentiality. It is contemplated that in the course of the performance of this Agreement each Party may disclose from time to time Confidential Information to the other Party. Each party agrees (a) not to use Confidential Information received from the other for any purpose other than the performance of its obligations hereunder, and (b) not to disclose Confidential Information so received to any Third Party, except as is required by a court or governmental authority. In the event that such disclosure to a Third Party becomes necessary or required, the disclosing Party shall give to the Party from whom the Confidential Information was received prior written notice so as to permit the latter to take possible action to protect and/or safeguard its rights in the Confidential Information . . . .

3. With respect to public announcements, the License Agreement provides in relevant part as follows:

Public Announcements. Neither Party shall make any public announcement concerning the transactions contemplated herein or to make any public statement which includes the name of the other Party or any of its Affiliates, or otherwise use the name of the other Party or any of its Affiliates in any public statement or document except as may be required by law or judicial order (and then only following consultation with the other Party), without the written consent of the other Party . . . .

4. The License Agreement also calls for arbitration in accordance with the Arbitration Rules of the German Institution of Arbitration. Section 43 of those Rules provides:

The parties, the arbitrators and the persons at the DIS Secretariat involved in the administration of the arbitral proceedings shall maintain confidentiality towards all persons regarding the conduct of arbitral proceedings, and in particular regarding the parties involved, the witnesses, the experts, and other evidentiary materials. Persons acting on behalf of any person involved in the arbitral proceedings shall be obligated to maintain confidentiality.

5. Attached hereto as Exhibit 1 is a true and correct copy of Roche's Statement of Claim in the German Arbitration ("the Statement of Claim").

6. Attached hereto as Exhibit 2 is a true and correct copy of the complaint in Roche Diagnostics Corporation v. Polymer Technology Systems, Inc., 1:03-CV-0848 JDT-WTL (2003), filed on June 9, 2003 ("the 2003 complaint").

7. Attached hereto as Exhibit 3 is a true and correct copy of the docket sheet in the 2003 litigation ("the 2003 Docket Sheet").

8. Attached hereto as Exhibit 4 is a true and correct copy of a settlement agreement between Polymer Technology Systems, Inc., and Roche Diagnostics GmbH and Roche Diagnostics Corporation, dated December 15, 2003 ("the Settlement Agreement").


9. Attached hereto as Exhibit 5 is a true and correct copy of a license agreement between Polymer Technology Systems, Inc., and Roche Diagnostics GmbH and Roche Diagnostics Corporation, dated December 15, 2003 ("the License Agreement").

10. Attached hereto as Exhibit 6 is a true and correct copy of a statement filed by Polymer Technology Systems, Inc. with the German Institution of Arbitration ("the PTS Statement").

11. Attached hereto as Exhibit 7 is a true and correct copy of a Notice of Appearance filed by Polymer Technology Systems, Inc. with the German Institution of Arbitration ("Notice of Appearance").

I declare that the foregoing is true and correct.

Dated: New York, New York  
March 11, 2010

  
\_\_\_\_\_  
Omar A. Khan  
Wilmer Cutler Pickering  
Hale & Dorr LLP  
399 Park Avenue  
New York, New York 10022  
(212) 230-8800